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REMARKS

Claims 1 through 65 are pending in this application and allowed. Prosecution on the merits is closed. By virtue of the present *Ex parte Quayle* Action, the Examiner further requested that the Applicant contact the Examiner "for disposition of the remaining claims". The discussion with the Examiner occurred on February 14, 2006, during which agreement was reached between applicants and the Examiner on the allowability of all 65 claims. Applicants have now met all of the Examiner's requirements in the January 30, 2006 Office Action.

On February 23, 2006, the Examiner again contacted Applicant's representative, and requested a terminal disclaimer related to US Patent Application 09/742,686 as related to claims 8-17, 21-23, 40-50, and 54-56 of the present application. Both US Patent Application 09/742,686 and the present application were filed on December 20, 2000 and are both based upon US Provisional Application 60/239,811. Applicants respectfully disagree with the need for a terminal disclaimer.

To begin with, no statutory basis for the Double Patenting assertion has been provided to the Applicants. 37 CFR 1.104(2) states "The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution." The statutory basis for the assertion of Double Patenting is required and has not been stated. Therefore, should the Examiner decide to continue the requirement for a Terminal Disclaimer, the next Office Action can not be a final.

Furthermore, the claims of the 09/742,686 application are different from those in the present application. In the second interview, the Examiner cited to claim 11 of the 09/742,686 application (as published as US Patent Publication 2002/0118766 A1).

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11. A method of selecting forward error correction parameters in a channel having a plurality of subchannels in a multicarrier communications system, comprising:

determining a signal-to-noise ratio representing a subset of the subchannels to provide said representative performance measurement;

storing, in a table, the number (s) of discrete multi-tone symbols in a forward-error-correction frame, the number (z) of forward-error-correction control symbols in the discrete multitone symbol associated with the signal-to-noise ratio, the maximum number of transmissions (k) and the number of subchannels associated with the signal-to-noise ratio, and a net coding gain for different values of s, z, signal-to-noise ratios and numbers of subchannels; and

selecting forward error correction parameters of the channel based on the net coding gain by applying an approximation to a subset of values in the table.

This claim is far more detailed than the claims that the Examiner cites, and bases the forward error correction on "the net coding gain by applying an approximation of a subset of values in the table". In contrast, independent claims 8, 21, 40, and 54 of the present application bases the forward error correction parameters, in all or in part, "on the signal-to-noise ratio".

As such, the claims of US Patent Application 09/742,686 are different from the claims of the present application, and a terminal disclaimer is not required.

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CONCLUSION

With all issues resolved, a Notice of Allowance is hereby requested.

The commissioner is authorized to charge deposit account 503650 for any fees associated herein.

Respectfully submitted,


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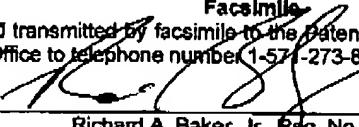
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Date: March 6, 2006